evidence of undue influence, and a failure on the part of the assured to comply with certain technicalities necessary to make a new certificate effective, yet without this the wife's equities were too strong to be overcome. *Supreme Council Cath. Benev. Legion* v. *Murphy* (1903), — N. J. — 55 Atl. Rep. 497.

In *Spengler* v. *Spengler*, the court seemed to consider that very little short of an agreement binding the assured not to change the beneficiary, would have been sufficient, while in *Benevolent Society* v. *Murphy*, the wife's equities were given greater effect and held to be so strong as to render a change ineffectual. The weight of authority is undoubtedly to the effect that when the by-laws of a benefit society allow a member to change the beneficiary, he can exercise that power at any time by complying with the by-laws, unless he has bound himself to the beneficiary upon a good and sufficient consideration not to do so. *Barton* v. *Prov. Mutual R. Assn.*, 63 N. H. 535. *Lamont* v. *Hotel Men's Assn.*, 30 Fed. Rep. 817; *Masonic Mutual Benefit Assn.* v. *Burkhardt*, 110 Ind. 189, 11 N. E. Rep. 449; *Hopkins* v. *Hopkins*, 92 Kentucky 324, 17 S. W. Rep. 864; *Mulderick* v. *Grand Lodge A. O. U. W.*, 155 Pa. St. 505; *Splawn* v *Chew*, 60 Tex. 532. These cases must be distinguished, however, from those relating to the ordinary life policy. In the latter the beneficiary takes a vested interest, which cannot be divested without his consent. *Brown* v. *Murray*, 54 N. J. Eq. 594; *Bank* v. *Hume*, 128 U. S. 195.

MORTGAGE—"CLOG" ON REDEMPTION—COLLATERAL ADVANTAGE. The holder of shares in a tea company agreed in a mortgage of the shares that "always thereafter" he would use his best endeavors to have the mortgagee act as broker for the company in selling tea and personally to pay a commission on all tea not sold through the mortgagee. The mortgage was paid. *Held*, that the agreement was not binding as being a fetter on the equity of redemption, and suit could not be maintained thereon. *Bradley* v. *Carritt*, [1903], A. C. 253.

The ground for the decision is clearly stated by Lord Davey: "The principle, as it appears to me, is that on payment of the principal, interest and costs, together with any bonus or anything in the nature of a bonus which has been properly stipulated for, and has become payable,,the mortgage contract comes to an end, and the mortgagor is entitled to get his property back, unaltered in character, condition, and incidents, and is henceforth relieved from the burden imposed upon him by the contract." See also, *Jarrah* etc. *Corporation* v. *Samuel* [1903], 2 Ch. 1, I MICHIGAN LAW REVIEW 73, and *Law Quarterly Review*, July, 1903, p. 248.

MUNICIPAL CORPORATIONS—DEFECTIVE CULVERT—LIABILITY FOR DAMAGE TO ADJOINING PROPERTY—INDEPENDENT OFFICERS.—A culvert was constructed under a street in the City of Manchester by a board of street and park commissioners appointed under a statute conferring upon it full charge, management and control of the building, constructing, repairing and maintaining of the streets in said city, and vesting in it "all the powers now by law vested in the board of mayor and aldermen, the city councils and the highway surveyors of the various highway districts of said city." Owing to the insufficiency of the culvert, of which the city had notice, plaintiff's land was damaged by water, and he brings suit against the city. *Held*, that by common law, towns and cities are liable for damage occasioned an owner of land adjacent to a highway so constructed by a public officer as to turn water upon the adjoining land, providing, after reasonable notice, it neglected to remedy the difficulty; and that it could not be presumed that the legislature, by plac-

ing the streets under the control of a board of commissioners, intended to relieve the city from such liability. *Clair* v. *City of Manchester* (1903), — N.H. — 55 Atl. Rep. 935.

The principle is well established in New Hampshire, and was urged as a defense in this case, that street commissioners and boards of public works, elected or appointed under authority of law, are independent public officers, are not the agents of the city for which they act, and the city is not liable for their negligence. *Gross* v. *City of Portsmouth*, 68 N. H. 266; 33 Atl. Rep. 256, 73 Am. St. Rep. 586; *Hall* v. *City of Concord*, 71 N. H. 367, 52 Atl. Rep. 864, 58 L. R. A. 455. We have in this case, therefore, the somewhat incongruous situation of a city held liable for a defect in its streets occasioned by officers over whom it had no control, and which it had no apparent means of remedying by its own agents. The ground on which the liability is predicated is that the statutory obligation of towns and cities to build and maintain highways, vests in them an ownership in the highways and that ownership imposes upon them a duty towards the owners of adjoining land, which, so far as regards the consequences of their acts or omissions in building and repairing, is not to be distinguished from the duty of an ordinary adjoining proprietor of land with respect to the premises of his neighbor. *Gilman* v. *Laconia*, 55 N. H. 130, 20 Am. Rep. 175; *Haynes* v. *Town of Burlington*, 38 Vt. 350; *Bailey* v. *Mayor*, etc., 3 Hill 531, 2 Denio 431; *Eastman* v. *Meredith*, 36 N. H. 284. The city being charged with the duty, the law by implication confers upon it the power to employ a suitable agency. For a full discussion of the question of municipal liability for negligence see *Hill* v. *City of Boston*, 122 Mass. 344; *Howard* v. *City of Worcester*, 153 Mass. 426; *Barnes* v. *District of Columbia*, 91 U. S. 540; and SMITH ON MUN. CORP. §§ 786, 804, 806, 1172 and cases there cited.

SALES—CONDITIONAL CONTRACT TO SELL. By a contract with plaintiff, defendant was to be given possession of a safe, pay $321.00 rent thereof in six equal monthly installments and protect the safe from injury, removal or process. Plaintiff agreed that, upon full performance of the above conditions he would sell the safe to defendant for $1.00, but until such complete performance, title was to remain in plaintiff. In case of default in payment of a month's rent or in other of the said conditions plaintiff had a right to retake the safe, terminate the lease and retain all rent paid, after which defendant should have no claim on the safe. Defendant was also to keep the safe insured. Plaintiff sued to recover the first installment due under the contract. *Held*, this was a conditional sale. *Herring-Hall Marvin Co.* v. *Smith* (1903) — Ore. — 72 Pac. Rep. 704.

Had the court said that this was a conditional contract to sell, its language would have been more accurate. This is a form of that class of contracts popularly termed "installment contracts" or "conditional sales," whose purpose is "to facilitate sales and purchase upon credit and especially to avoid the publicity and statutory regulations of chattel mortgages." The United States Supreme Court has held that contracts, very similar to these but distinguishable therefrom, were absolute sales reserving a lien or constituting chattel mortgages. See *Hereford* v. *Davis*, 102 U. S. 235. The same results have been reached, however, in cases less readily distinguishable from conditional contracts to sell. See MECHEM ON SALES, §576; *Greer* v. *Church*, 13 Bush. (Ky.) 430; *Knittel* v. *Cushing*, 57 Texas 354, 44 Am. Rep. 598. The decision in *Greer* v. *Church*, especially, seems to directly conflict with the Oregon holding. Also, contracts in form conditional contracts to sell, have been held to be chattel mortgages in a considerable number of